

OPERATION DESERT STORM: R.E. LEE or W.T. SHERMAN?

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War will never be abolished by people who are ignorant of war.

—Walter Lippman¹

I. Introduction

As the brilliant Allied military victory in the Persian Gulf recognizes its first anniversary, the focus has shifted from the emotions of homecoming celebrations to the seriousness of lessons learned and lessons validated. While the ingredients of victory are a combination of many factors—from logistics to training to armament—history has shown that one of the most important elements in a successful combat operation is the quality of the commander. The commander decides the strategy, directs the tactics, and inspires the morale of his soldiers. To those mediocre captains of history who arrogantly relied on sheer numbers of forces to ensure success on the battlefield, the past is replete with the story of the small army which, with the leadership of a great commander, overwhelms numerically superior forces.

Operation Desert Storm² confirmed that the American commander, General Norman Schwarzkopf, was no mediocre leader. Clearly, he had learned well many of the lessons written in the bloody ink of military history. In this context, the war also paid a magnificent tribute, albeit a silent one, to a man who is arguably the greatest military leader this country

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¹ T. HARRY WILLIAMS, *THE HISTORY OF AMERICAN WARS* xviii (1981).

² See Michael Cramer, *Kuwait: Back to the Past*, TIME, Aug. 6, 1991, at 33. The military campaign in the Persian Gulf actually was a single battle with the expressed goal being the liberation of Kuwait. For an excellent overview of the campaign see *The Gulf War*, MIL. REV., Sept. 1991.

has ever produced—Robert E. Lee. Actually, not only in the sphere of battlefield tactics, but in ensuring strict adherence to the laws regulating warfare,³ General Lee and General Schwarzkopf had much in common; tactical skills and ethical conduct go hand in hand in the making of a great leader.

Unfortunately, however, many are unaware of the phenomenal benefits that our military has most certainly drawn from General Lee. Curiously, this was brought out by the battle in the Persian Gulf. When reporters asked General Schwarzkopf which military leaders he most admired, Schwarzkopf, as expected, turned to the War Between the States for his examples. What was totally unexpected to some, however, was that he departed from the opinions of recent prominent American military leaders who typically cited General Lee,⁴ and instead cited General William T. Sherman as one of his heroes.⁵ As this article will assert, the United States of America was fortunate that both General Schwarzkopf and the forces under his command emulated the tactics and humanity of the Confederate General instead of the Union leader he mentioned.

Although General Schwarzkopf's public admiration for General Sherman really raised little concern about the soundness of America's military strategy or its willingness to abide by the law of war in the conduct of hostilities, his recognition of Sherman and exclusion of Lee does raise several critical issues.

³ The laws of war consist of all of those laws, by treaty and customary principles, that are applicable to warfare. Its basic role is to limit the impact of the evils of war by: "(1) Protecting both combatants and noncombatants from unnecessary suffering; (2) Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and (3) Facilitating the restoration of peace." Dep't of the Army, Field Manual 27-10, *The Law of Land Warfare*, at 3 (July 1956) [hereinafter FM 27-10].

⁴ The previous commander of an American force equivalent in size to the one commanded by General Schwarzkopf was General William Westmoreland, from the Vietnam War. The man General Westmoreland most often cited as his role model was General Lee. In his memoirs, *A Soldier Reports*, he leaves no doubt that his touchstone was Robert E. Lee. Lee so influenced the Westmoreland family that when his father died, General Westmoreland had a favorite quotation from Lee carved into the headstone: "Duty is the sublimest word in the English language." See JAMES RESTON, JR., *SHERMAN'S MARCH AND VIETNAM* 279 (1984).

⁵ Lewis Lord, *civil War Tactics Could Win 'The Mother of Battles,'* U.S. NEWS AND WORLD REP., Feb. 25, 1991, at 42; Paul Hoversten, *Schwarzkopf Introspective*, USA TODAY, Feb. 28, 1991, at 6A. Schwarzkopf also named General Ulysses S. Grant. Grant is remembered best for his resolve to "fight it out." In the first month that Grant confronted Lee—from May to June 1864—he sacrificed, in suicidal frontal assaults, over 50,000 of his men. This was a five-to-one loss ratio against the ill-fed and ill-equipped Confederate forces. Grant compensated for Lee's tactical superiority by relying on overwhelming manpower and material to wear Lee down. Although the Federals were defeated in almost every engagement, Grant correctly understood that the Federal forces could keep losing longer than the Rebels could keep winning.

First, recognizing the importance of image projection, it provides an opportunity to examine the roots of America's international reputation in terms of war-making and the role of law in regulating this conduct.⁶ Second, from both a tactical and law-of-war perspective, whom did our commanders and soldiers most emulate — Robert E. Lee or William T. Sherman?

II. R.E. Lee

*The blow, whenever struck, must, to be successful,
be sudden and heavy.*

—R.E. Lee⁷

An unspoken tribute to General R.E. Lee was particularly evident in the grand strategy used by the American commander in the Gulf. As General Schwarzkopf held his "victory" press conference and explained the concept of the overall operation in the defeat of the Iraqi forces, he obviously not only had been able to apply the lessons and experiences of his own career successfully, but also had drawn heavily from the wisdom of General Lee.

To the serious student of American history, Schwarzkopf's celebrated "Hail Mary" flanking movement to the west of the enemy strongly echoed from another time and place. While no two wars are ever alike, and every commander's actions must be evaluated in terms of their unique circumstances, the basic tactics employed in the "hundred-hour" ground war were undeniably similar to those used by the commander of the Confederacy's Army of Northern Virginia.

Time after time, General Lee executed magnificent flanking movements at battles such as Second Manassas (1862), Chancellorsville (1863), and The Wilderness (1864).⁸ Similarly, the ground phase of Operation Desert Storm was vintage Lee—that is, fix the enemy forces in place and hit them suddenly

⁶ See also Stephen W. Sears, *McClellan vs. Lee*, MIL. HIST. Q., Autumn 1988, at 10. A similar comparison between Lee and another Union commander, General George McClellan, concludes that Lee probably was the greatest American military commander ever produced and that McClellan was someone who had considerable military knowledge, wanted to be president, and "sat a horse well."

⁷ Rod Gragg, *The Quotable Robert E. Lee*, S. PARTISAN IX, 1989, at 26, 31.

⁸ See generally DOUGLAS SOUTHBALL FREEMAN, *LEE'S LIEUTENANTS, A STUDY IN COMMAKD* (1946). Lee's only major error during the War Between the States was the frontal assault he ordered on the third day at Gettysburg, in July 1863. Failing to break the Federal defenses, he still was able to withdraw his army intact.

and heavily in the flank. The heart and soul of Lee's superior strategy was based on surprise and economy of force—the same key elements superbly employed in Operation Desert Storm.

A. Lee as a Role Model

That America's military leaders continue to concentrate on the military campaigns of General Lee is, of course, no revelation to most senior officers in the armed forces. Even the United States Navy acknowledges the leadership abilities of Lee, studying and publishing at the Naval War College the works of scholars who have devoted their entire lives to exploring the person and legend of Lee.⁹ As for Lee's most natural constituency—the ground commanders¹⁰—one need only take a cursory tour of the Army War College in Pennsylvania to confirm its commitment to studying the War Between the States in general, and R.E. Lee in particular. Battle scenes from the bloodiest war in American history hang from almost every hall in the institution. In a recent United States Army War College publication concerning two of Lee's most classic victories, the authors confidently challenged modern officers to learn from, and appreciate the genius of, Lee and his corps commander T.J. "Stonewall" Jackson. In the preface they note, "Lee and Jackson did not see themselves as old soldiers; they considered themselves modern soldiers, and *today's officers will quickly learn to identify with them.*"¹¹

⁹ See STUART W. SMITH, DOUGLAS SOUTHALL FREEMAN ON LEADERSHIP (1990). Published by the Naval War College Press for use in the training of senior Naval officers, it encompasses every aspect of Lee's tremendous leadership qualities. See also Douglas Southall Freeman, *Robert E. Lee: Maker of Morale*, 44 NAVAL WAR C. REV., 75 (1991). But see David Maurer, *Putting the General on the Couch*, THE DAILY PROGRESS, Sept. 30, 1991, at A7. Lee's reluctance to shame or humiliate another person was probably his only handicap as a commander. Dr. J. Anderson Thomson, a noted psychiatrist from Charlottesville, Virginia, pointed out this paradox concerning Lee: "Here's a person who is considered one of the greatest leaders of men in the deadliest form of conflict known, armed warfare, who in inner-personal contacts had difficulty reprimanding or tactfully criticizing a subordinate who had disappointed or even failed him terribly."

¹⁰ See JOHN E. JESSUP & ROBERT W. COAKLEY, A GUIDE TO THE STUDY AND USE OF MILITARY HISTORY (1979); MICHAEL SHAARA, THE KILLER ANGELS (1990). These books are just samples of many used by the United States Army in the training of its officers at Fort Leavenworth, Kansas. In addition, Lee's Chancellorsville campaign is given detailed attention in a separate block of instruction.

¹¹ JAY LUVAS & HOWARD W. NELSON, THE U.S. ARMY WAR COLLEGE GUIDE TO THE BATTLES OF CHANCELLORSVILLE AND FREDERICKSBURG xvii (1988) (emphasis added).

B. Lee's Impact on the American Military

Apart from being the most enduring conflict in the nation's psyche, the "Civil War"¹² brought into focus the extraordinary genius of General R.E. Lee—a genius so phenomenal that his impact upon the armed forces of the United States is still felt over a hundred and twenty years after his death. This is not surprising, however, when one considers that even before the outbreak of the War, Lee's military value already was firmly established in the young nation.

General Winfield Scott, commander of the American forces during the Mexican War (1846-1848), noted on many occasions that that war was won due largely to the efforts of, then, Captain Robert E. Lee. Captain Lee had made such an impression on Scott that thirteen years later, in 1861, when asked about the best officer in the United States military, he promptly replied, "I tell you, sir, that Robert E. Lee is the greatest soldier now living, and if he ever gets the opportunity, he will prove himself the greatest captain of **history**."¹³

President Abraham Lincoln also was well acquainted with Lee's military acumen. In April 1861, before Colonel Lee—then serving in the 2d United States Cavalry—had to decide between Virginia and the Union, Lincoln eagerly tendered to Lee the supreme command of all Union forces in the field. If he had accepted, Lee would have been second only to General Scott, who was then the general-in-chief of the Federal forces.

Weighing a devoted career spanning over thirty years of service to the Armed Forces of the United States against his attachment to Virginia, Lee turned down this greatest of all opportunities.¹⁴ Taken to the mountain top of temptation and offered what many a soldier dreams of—fantastic success and fame—Lee maintained his loyalty to his state and family, thereby reflecting to the world a glimpse of his incredible in-

¹² The term "the War" refers to the War Between the States, popularly called the American Civil War. However, Francis Lieber, the author of the Union's rules regulating warfare, correctly asserted that the conflict between North and South was not a "civil war." Lieber commonly defined the term civil war as, "War between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government." See RICHARD SHELLY HARTIGAN, *LIEBER'S CODE AND THE LAW OF WAR* 18 (1983). As Mark Twain, himself a former Confederate soldier, often remarked, "In the South, *the War* is what A.D. is elsewhere, they date from it."

¹³ REV. J. WILLIAM JONES, *LIFE AND LETTERS OF GENERAL ROBERT EDWARD LEE* 129 (1906).

¹⁴ Gragg, *supra* note 7, at 31. Just before submitting his resignation, Lee wrote, "With all my devotion to the Union, and the feeling of loyalty and duty of an American citizen, I have not been able to make up my mind to raise my hand against my relatives, my children, and my home."

tegrity. A product of southern aristocracy, honor and duty were more important than fame. He could not draw his sword against his native state. W.T. Sherman would later write of Lee, "His Virginia was to him the world"¹⁵

At the conclusion of the War Between the States, military leaders throughout the world quickly recognized the incredible battlefield accomplishments of Lee. British, Prussian, and French officers, renowned in their own rights, expressed only the highest regard for General Lee.¹⁶ The great British officer, General Garnett Joseph Wolseley, had observed Lee at first-hand during the War and called him a genius in the art of warfare, "being apart and superior to all others in every way, a man with whom none I ever knew and few of whom I have read are worthy to be classed."¹⁷

While the Virginia of the Old South long since has faded, in the decades that have passed and to this day, Lee's name only has increased in brightness,¹⁸ illuminating the pages of military doctrine as perhaps no other soldier in American history. "Few public figures in any age have bequeathed such an enduring legacy of national respect and affection"¹⁹ Indeed, in the history of the United States, no officer has inspired such great devotion and trust in his soldiers as did General Lee.²⁰

This leadership quality was illustrated beautifully in an incident just before the surrender at Appomattox when Lee turned to Brigadier General Henry Wise and asked him what the army and country would think of him once he surrendered. General Wise, a former governor of Virginia blurted out, "General Lee,

¹⁵ JUSTIN WINTLE, *THE DICTIONARY OF WAR QUOTATIONS* 280 (1989).

¹⁶ British soldiers included Colonel Chesney, Lord Wolseley, Lord Roberts, and Colonel Henderson; Prussian soldiers included Von Moltke, Bismarck, Colonel Von Borcke, Colonel Scheibert, and Major Mangold. See Jones, *supra* note 13, at 483.

¹⁷ *Id.* at 484.

¹⁸ See PAUL C. NAGEL, *THE LEES OF VIRGINIA* 300-05 (1990). World-wide recognition of Lee as a great "soldier, gentleman and Christian" first began in France, in the mid-1870's. By the first decade of the twentieth century, Britain also had become enthralled totally with Lee—in part because of the great English writer Henry James. The Canadians, who always had been sympathetic to the South, quickly expressed their high regards for General Lee. By the time Lee died in 1870, the *Montreal Telegraph* was able to say, "Posterity will rank Lee above Wellington or Napoleon, before Saxe or Turenne, above Marlborough or Frederick, before Alexander, or Caesar In fact, the greatest general of this or any other age. He made his own name, and the Confederacy he served, immortal." JONES, *supra* note 13, at 483.

¹⁹ ROD GRAGG, *ILLUSTRATED COXFEDERATE READER* 224 (1989).

²⁰ See GREGORY J. URWIN, *THE UNITED STATES INFANTRY* 15-30 (1988). One could argue that General George Washington perhaps equalled Lee in terms of devotion by his soldiers.

don't you know that you are the army [T]here is no country. There has been no country, for a year or more. You are the country to these men."²¹

Arguably, Lee contributed more than any other single man in setting the very bedrock for some of the most outstanding and valuable attributes of American military power. That bedrock is so strong today that, when asked to identify the most notable characteristics of the United States military, one can expect the worldwide response to literally echo Lee's signature—superior tactical abilities in combat leaders and civilized conduct of Americans in war.

That the American military establishment proudly has maintained its reputation not only for sound military tactics, but also for an unmatched sense of humanity, is well known.²² One of the men most responsible for all of this—General Lee—is not as well advertised. Perhaps the passage of time has concealed his name. On the other hand, Lee's fame may have been reduced by an unfortunate legacy, marred in the minds of many Americans who still lack an understanding of his cause.²³

In spite of the fact that its greatest champion often is overlooked, Lee's tactics and civility have become ingrained into the character of the United States military establishment. Although these qualities certainly existed before the emergence

²¹ Joseph B. Mitchell, *You Are the Army*, CIVIL WAR, July-Aug. 1991, at 25. When General Lee surrendered the Army of Northern Virginia in April 1866, all military forces throughout the South quickly followed suit. The identification with Lee clearly was so great that much of the Confederate military followed Lee, rather than President Jefferson Davis, who advocated continued resistance.

²² See B. BLECHMAN & S. KAPLAN, *FORCE WITHOUT WAR* 9 (1979). No nation has been as active as the United States in adherence to the rules of warfare, as well as the peacetime use of its forces "in providing disaster assistance and similar supportive activities." *Id.*

²³ See Jeffrey F. Addicott, *Values and Religion in the Confederate Armies*, CONFEDERATE VETERAN, Nov.-Dec. 1990, at 29-38. The popular revisionistic claim that the average Confederate soldier fought to perpetuate the evil of slavery is without historical validity. While the issue of slavery was certainly a catalyst, the vast majority of Confederate soldiers did not own slaves, or ever hoped to own them. They did not view themselves as fighting for slavery. Actually, the greatest leaders in the army were opposed strongly to the institution. General Lee owned no slaves, and those in his wife's estates were freed in 1862. His opposition to the evil of human servitude is well documented. Before the War, he believed in a process of gradual manumission. At the conclusion of the War, having suffered total poverty from its effects, he wrote,

So far from engaging in a war to perpetuate slavery, I am rejoiced that slavery is abolished. I believe it will be greatly for the interests of the South. So fully am I satisfied of this . . . that *I would cheerfully have lost all I have lost by the war and suffered all I have suffered, to have this object attained.*"

Id. (emphasis added).

of Lee the general, his genius and humanity have epitomized and translated them into the very fabric of subsequent American military doctrines. For this reason, any analysis of the United States military—either in terms of tactics or comportment with the law of war—that ignores the tremendous contributions of General Lee never can be more than a fraction of the truth. More closely than any other officer in this nation's history, Lee has proved to be the most qualified to project the American standard of behavior in these areas.

III. W.T. Sherman

[W]e are not only fighting hostile armies, but a hostile people, and must make old and young, rich and poor, feel the hard hand of war, as well as their organized armies.²⁴

—W.T. Sherman

When General Schwarzkopf listed General Sherman as among those whom he most admired from history, many misunderstood the reasons associated with that choice and hence, the efficacy of his **statement**.²⁵ In the minds of many Americans—particularly in the South—the name of W.T. Sherman immediately is associated with a most heinous array of war crimes.

During his **1864** march from Atlanta to the sea, and then through South Carolina, Sherman employed a concept of “total war,”²⁶—a concept that included the targeting of defenseless civilian populations. The wanton destruction and theft of non-military property that resulted from that campaign, arguably marked Sherman as one of the most infamous figures in American military history. Of course, this was not the attribute that General Schwarzkopf sought to embrace when he listed Sherman as one of his heros. Was it then the tactical side of Sherman that won Schwarzkopf's respect?

²⁴ RUSSEL F. WEIGLEY, HISTORY OF THE UNITED STATES ARMY 252 (1984).

²⁵ See *supra* text accompanying note 5. News releases did not give any detailed explanation for General Schwarzkopf's admiration of Sherman. The reasons advanced included: (1) he was a “muddy boot” soldier; (2) he did not worry about taking the credit for accomplishments—only for getting the job done; and (3) he hated war, but waged it ferociously.

²⁶ See WILLIAMS, *supra* note 1, at 300-02.

Few historians rank General Sherman among the brilliant.²⁷ Most writers believe that he was far too cautious when conducting war against sizable concentrations of enemy soldiers. "As a consequence he tended to hold back both in the employment and deployment of his forces. This in turn either cost him defeats, as at Missionary Ridge, or else lost him the fruits of victory, as at Jonesboro."²⁸

As a military commander Sherman was, at best, only average. Compared to the vast majority of Union general officers, however, Sherman looked fairly capable. His mainstay was his tenacity, not his imagination. Tenacity, on the other hand, can do great things when juxtaposed with a tremendous military might, such as was furnished to him by the industrialized North. Sherman systematically could conduct his version of "total war" at will.

After burning the entire city of Atlanta to the ground, Sherman set out with over 62,000 Federal soldiers—not to engage Confederate combat forces, but to "make Georgia howl."²⁹ Tragically, the only persons who "howl" under such brutal activities are members of the defenseless civilian population—primarily women and children. Although Sherman issued "official" orders that prohibited the trespass of all dwellings, required the leaving of reasonable provisions for families who were forced to provide food, and even prohibited the use of profane language, in reality none of these orders actually were enforced.³⁰ The soldiers were allowed to rob, pillage, and burn in a swath of horror that, from one wing of his forces to the other, extended almost sixty miles in width.

As members of the Union army approached their homes, defenseless southern civilians understood the approaching terror. In the distance, they could see the pillars of smoke by day and the fires by night. If Sherman did not order the rape³¹ and

²⁷ Thomas Robertson, *The War in Words*, CIVIL WAR TIMES ILLUS., Oct. 1979, at 20.

²⁸ *Id.*

²⁹ WINTLE, *supra* note 16, at 281. Sherman wired to General Grant on Sept. 9, 1864, "Until we can repopulate Georgia, it is useless to occupy it; but the utter destruction of its roads, houses and people will cripple their military resources. I can make this march and make Georgia howl." The Confederate army under General Hood had evacuated Atlanta and marched north into Tennessee. Apart from Rebel cavalry to harass his flanks, or small local home guards consisting of old men and boys, General Sherman faced no significant military opposition until he reached North Carolina.

³⁰ RESTON, *supra* note 4, at 67.

³¹ Because of the social stigma attached, rape was a crime seldom discussed in nineteenth century America; victims often kept the crime to themselves. While it was probably less widespread than some might allege, documented cases of Sher-

other physical abuses that accompanied his campaign of terror, he—as the commander of the army—must have shared responsibility for these additional crimes.³²

Boasting of his wholesale looting and burning through Georgia, General W.T. Sherman telegraphed to his superior, General U.S. Grant,³³ “I sincerely believe that the whole United States, North and South, would rejoice to have this army turned loose on South Carolina, to devastate that state in the manner we have done in Georgia.”³⁴ Later, as Sherman headquartered in

man’s forces raping black and white Southerners occurred. Dr. Daniel Trezevant, a respected physician in Columbia, South Carolina, listed several cases of which he had personal knowledge. See GRAGG, *supra* note 19, at 192-96. *But see* RESTOK, *supra* note 4, at 73-74. In the city of Milledgeville, Georgia, only one rape of a white female could be substantiated by a respected writer and physician, Dr. James Bonner.

³² Modern concepts of what is termed “indirect responsibility” come from two American cases. The obvious standard to apply to a commander is the “direct knowledge” standard. If a commander orders a violation of the law of war, or does nothing to stop a violation he has knowledge about, he is guilty of those crimes. This is known as the *Medina* standard, so named from the courts-martial of Captain Ernest Medina, for his role in the My Lai massacre in Vietnam. The second standard for command responsibility comes out of the *Yamashita* case from World War II. Yamashita, a Japanese general officer, was tried for the rape and murder spree committed by 20,000 Japanese troops in Manila. Although the military commission was unable to prove that Yamashita ordered the crimes, it held him responsible under a “should have known” theory. If, through normal events, the commander should have known of the crime, but did nothing to stop it, he or she is guilty of the actions of his or her soldiers. This “should have known” standard applies only when a widespread pattern of abuse over a long period of time has existed. In this scenario, the commander is presumed either to have knowledge of the crimes or to have abandoned his or her command. See JOHN NORTON MOORE, FREDERICK S. TIPSON, & ROBERT F. TURNER, NATIONAL SECURITY LAW 387-401 (1990).

³³ As his superior, General Grant shares culpability for Sherman’s actions. Grant actually approved, and later defended, the actions of his subordinate. Sherman, however, could not rely on the defense of superior orders to escape responsibility. This rule was firmly established in the context of the only major “war crimes” trial that came out of the War—the Union trial of Confederate Major Henry Wirz. Major Wirz was the commandant of the Andersonville prisoner of war camp in Georgia and was charged with numerous offenses, to include murder. Although the trial was flawed in many respects, it correctly affirmed a principle of law—that is, the defense of superior orders would not justify violations of the law of war. See Glen W. LaForce, *The Trial of Major Henry Wirz: A National Disgrace*, THE ARMY LAW., Jan. 1988, at 3.

³⁴ Because South Carolina was the first southern state to secede from the Union, Sherman felt that the citizens of the state should be made to suffer. GRAGG, *supra* note 7, at 30. Sherman thoroughly devastated South Carolina. A noted northern journalist, John T. Trowbridge, traveled through South Carolina just after the War ended and recorded the sight that greeted him:

No language can describe, nor can catalogue furnish, an adequate detail of the wide-spread destruction of homes and property. The negroes were robbed equally with the whites of food and clothing. The roads were covered with butchered cattle, hogs, mules, and the costliest furniture.

For the full text, see GRAGG, *supra* note 19, at 180.

the finest mansion in Savannah, he again corresponded with Grant concerning his upcoming march through South Carolina. As if attempting to shed all responsibility for controlling his army Sherman said, "the whole army is burning with an insatiable desire to wreak vengeance upon South Carolina. I almost tremble for her fate, but I feel she deserves all that seems in store for her."³⁵

A. *The Law of War During the War Between the States*

Even though the modern international rules regulating the conduct of armed forces during combat, as codified in the 1949 Geneva Conventions, did not exist during the War Between the States, Sherman certainly violated the well-established customary prohibitions³⁶ of his day in addition to the much praised Lieber Code.³⁷ Issued to the Union forces as General Order No. 100, the Lieber Code spelled out very specific rules in the conduct of warfare, "correspond[ing] to a great extent to the laws and customs of war existing at that time." This code, coupled with the existing customary obligations, absolutely prohibited the larceny, vandalism, or indiscriminate burning of civilian property, as well as all associated crimes of violence against civilians. Article 47 of the Lieber Code provided that:

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, *the severer punishment shall be preferred*.³⁸

³⁵ RESTON, *supra* note 4, at 95.

³⁶ See generally HARTIGAK, *supra* note 12, at 554. Sherman "mocked the West Point canons that condemn[ed] atrocities, calling the canons 'old notions.'" JOSEPH GOLDSTEIN, BURKE MARSHALL & JACK SCHWARTZ, *THE MY LAI MASSACRE AND ITS COVER-UP: BEYOND THE REACH OF LAW?* 664 (1976).

³⁷ DIETRICH SCHINDLER & JIAI TOMAN, *THE LAWS OF ARMED CONFLICT* 3 (1988). Francis Lieber, a German international law scholar and professor at Columbia University, was asked by the Federal authorities to draft a code for the conduct of war on land. Promulgated as "Instructions for the Government of the Armies of the United States in the Field," it was issued on April 24, 1863. The Lieber Code consisted of 167 articles. See also MOORE, ET AL., *supra* note 32, at 309-10. The Southern forces adopted their own code of conduct for land warfare in 1861—"Articles of War, Regulations of the Army of the Confederate States." But see *id.* at 120-30. In June of 1863, James A. Seddon, the Confederate Secretary of War, pledged to abide by most of the substantive provisions of the Lieber Code.

³⁸ See SCHIKDLER & TOMAN, *supra* note 37, at 10 (emphasis added).

Certainly, many Union officers and soldiers assigned to Sherman did display military discipline, but the vast majority of Sherman's troops soon discovered that the chain of command made little effort to protect civilians or civilian property.³⁹ Early in the "march," some subordinate commanders, such as General Oliver Howard, dutifully informed Sherman that the soldiers were committing "inexcusable and wanton acts."⁴⁰ While still marching through Georgia, well before the most barbarous atrocities were committed, General Howard even issued his own orders:

It having come to the knowledge of the major general commanding that the crime of arson and robbery have become frequent throughout this army, notwithstanding positive orders both from these and superior headquarters having been repeatedly issued . . . it is hereby ordered: that hereafter any officer or man of this command discovered in pillaging a house or burning a building without proper authority, will upon sufficient proof thereof, be shot.⁴¹

Despite such "official" directives that threatened death by firing squad for any form of pillaging, not a single Union soldier ever was executed.⁴² The obligatory "wink at the law" had been given.⁴³ Accordingly, bands of roaming marauders, calling themselves foragers or "Sherman's Bummers," engaged in indiscriminate plunder upon the defenseless civilian population.⁴⁴ Sherman essentially refused to establish a military police force to "watch and discipline his own men because to have done so would have delayed the operation."⁴⁵

In defending his atrocities,⁴⁶ General Sherman did not attempt to conceal his crimes under the guise of military necessity. As provided in article 44 of the Lieber Code,⁴⁷ destruction

³⁹ See *supra* note 30 and accompanying text.

⁴⁰ RESTON, *supra* note 4, at 70. Howard related this to Sherman on November 23, 1864.

⁴¹ *Id.* General Howard issued this order on November 24, 1864.

⁴² *Id.*

⁴³ WEIGLEY, *supra* note 24, at 301. "[H]is men knew he [Sherman] would understand if they went beyond the orders. A great deal of unauthorized and individual looting went on as the army ripped across the state, and it went unpunished." *Id.*

⁴⁴ See MARSHA LANDRETH, WILLIAM T. SHERMAN (1990).

⁴⁵ See GOLDSTEIN, ET AL., *supra* note 36, at 555.

⁴⁶ Despite numerous eyewitness accounts to the contrary, Sherman always denied the burning of Columbia, blaming it on the retreating Confederate cavalry. See Bernard Davidson, *Who Burned Columbia? — A Review of General Sherman's View of the Affair*, in 7 S. HIST. SOC'Y PAPERS 185-92 (1977).

⁴⁷ SCHINDLER & TOMAN, *supra* note 37, at 6, 10.

of private property was allowed upon the order of an officer in the case of military necessity. Although the exception was worded in the negative—"all destruction of property not commanded by the authorized officer . . . are prohibited"⁴⁸—it was not meant to be construed broadly. If article 44 allowed the means for an officer to order an otherwise illegal act, articles 14 through 16—by setting out strict definitions of the term military necessity—certainly limited his ability to issue such commands.⁴⁹ Article 14 held that military necessity "consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war."⁵⁰

Anticipating that most cases of military necessity would involve the taking of food stuffs from the local population, article 16 of the Lieber Code did allow for the "appropriation of whatever an enemy's country affords *necessary for the subsistence and safety of the army*"⁵¹

Sherman, however, paid little attention to the Code. In twisted logic based on pure vengeance, he openly and intentionally targeted innocent civilians to make them suffer for having supported the Confederacy,⁵² rather than to feed his troops. Claiming that his barbarous machinations had a bright side—that is, they might somehow induce the civilians to sue for peace—Sherman freely admitted, "If the . . . [civilians in the South] raise a howl against my barbarity and cruelty, I will answer that war is war, and not popularity-seeking. If they want peace, they and their relatives must stop the war."⁵³ By his own admission, Sherman purposefully violated article 16 of the Lieber Code:

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

⁵¹ *Id.* (emphasis added).

⁵² See de Mulinen, *The Law of War and the Armed Forces*, 18 INT'L REV. OF THE RED CROSS 18, 20 (1978). "The only rules that count for the armed forces are those that must be applied in war. The question as to who is at the origin of a conflict and who is the victim is a matter belonging to the realm of politics and is of no concern to members of the armed forces."

⁵³ WINTLE, *supra* note 16, at 280. On set of commentators observed,

In [Sherman's] view the mission of the Army was to kill, burn, mangle and destroy, and in a memorandum to President Lincoln he urged a policy of ruthlessness, contending that the war must go on until "enough" southern landowners (innocent civilians) were killed off. He did not hesitate to invoke terror. He wrote, "To secure the navigation of the Mississippi River I would slay millions; on that point I am not only insane, but mad."

GOLDSTEIN, ET AL., *supra* note 36, at 554.

Military necessity does not admit cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of wounding or maiming except in fight . . . nor wanton destruction of a district. It . . . does not include any act of hostility which makes the return to peace unnecessarily difficult.⁵⁴

Finally, the popular but erroneous contention by some modern writers that “General Sherman’s march of devastation . . . during the American Civil War may have been viewed as lawful tactics at the time” is simply a twisted manifestation of “victor’s justice.”⁵⁵ The adoption of the Lieber Code as an official military order made the Code absolutely binding on all Federal soldiers—particularly the officers who were solemnly charged with upholding the laws.⁵⁶

B. Total War

In today’s setting, had General Schwarzkopf followed Sherman’s example of “total war,” not only would he be guilty of numerous war crimes, but also the armies he commanded and the nations he represented would have been subjected to the scorn and ridicule of the entire civilized world.⁵⁷ Even by the somewhat less rigid standards of his own day, General Sherman left the civilized world nothing worth emulating. Obviously, however, in stark contrast to his opponent Saddam Hussein, General Schwarzkopf strictly adhered to both the spirit and the letter of all aspects of the law of armed conflict. With the wholesale looting, hostage-taking, murdering, torturing, raping, and environmental destruction visited upon Kuwait, Saddam Hussein actually was the one who carried General Sherman’s notion of “total war” to unspeakable extremes.⁵⁸

Furthermore, the American Government never would tolerate abuses of this critical rule of law, particularly abuses that were command directed. The Bush Administration could be expected to take steps immediately to halt any violations of the

⁵⁴ SCHIKDLER & TOMAN, *supra* note 37, at 6.

⁵⁵ LAW AND RESPONSIBILITY IN WARFARE: THE VIETNAM EXPERIENCE 77 (Peter D. Trooboff ed., 1977). Victor’s justice refers to the view that the victorious side can prosecute anyone it wishes without regard to normal process of laws.

⁵⁶ See *supra* text accompanying notes 36-37.

⁵⁷ See Matthew E. Winter, “Finding the Law”—The Values, Identity, and Function of the International Law Adviser, 128 Mil. L. Rev. 1, (1990).

⁵⁸ See AMKESTY INT’L, IRAQ/OCCUPIED KUWAIT HUMAN RIGHTS VIOLATIONS SINCE AUGUST 2, 1991 (Dec. 1990).

law of war and to prosecute promptly any Americans guilty of these crimes.⁵⁹

Unfortunately, Sherman's conduct evidently was not so shocking to the Lincoln Administration.⁶⁰ Notwithstanding the rules that his general breached, the Commander in Chief apparently accepted Sherman's conduct. That the American government tolerated this behavior over 126 years ago should be disturbing, but not surprising. For instance, it earlier had condoned the forced evacuation of every human being in most of the border areas of western Missouri and, pursuant to General Order No. 11, it had directed the burning of every single home.⁶¹

Accordingly, when Sherman flippantly quipped, "War is hell,"⁶² he, by his barbarous acts, made it so hellish. Sherman's tactic—to assert that, because war is utterly repulsive, one need not abide by rules—is as old as it is fallacious.⁶³ Rules regulating the conduct of warfare and the associated punishments for those who violated those rules always have existed.⁶⁴ The real point of shame may have been that General

⁵⁹ See Dep't of Army, Field Manual 27-10, The Law of Land Warfare, para. 506(a) (1 July 1966). Under the provisions of the Geneva Conventions, each nation is obligated to search for persons alleged to have committed war crimes, to investigate the allegations, and to prosecute or extradite individuals so accused. In addition, the policy of the United States mandates that all American military personnel who are tried for war crimes must be prosecuted in military courts-martial under the substantive provisions of the Uniform Code of Military Justice. See GERHARD VON GLAHN, LAW AMONG NATIONS 870-91 (1991).

⁶⁰ Lincoln apparently was willing to overlook Sherman's actions because of his successes. The President sent Sherman the following message when he reached Atlanta; "God bless you and the army under your command." GOLDSTEIN, ET AL., *supra* note 36, at 555.

⁶¹ Dino A. Brugioni, *The Meanest Bushwacker*, BLUE AND GRAY, June 1991, at 32, 34. Union General Thomas Ewing issued the order in the fall of 1863. In essence, all individuals residing in an area that covered four western counties in Missouri were given 16 days to evacuate. The homes, farms, and fields of some 20,000 civilians were burned, and many of their personal valuables were stolen.

⁶² LANDRETH, *supra* note 44, at 62. Some writers believe that this phrase was taken from a speech made by Sherman in 1880. Sherman said, "There is many a boy here today who looks on war as all glory, but, boys, it is all hell." From this sentence the newspapers coined the phrase, "War is hell." Other sources attribute the phrase to a 1879 address made before the Michigan Military Academy where Sherman remarked, "I am tired and sick of war. Its glory is all moonshine . . . War is hell." See WINTLE, *supra* note 16, at 91.

⁶³ WINTLE, *supra* note 16, at 24. Marcus Tullius Cicero (106-43 B.C.) stated in *Pro Milone* (61 B.C.) "*inter arma legis silent*," which means, in war the law is silent. That statement was not true then and is not true today. Rome had very specific rules on the regulation of hostilities. See ARTHUR FERRILL, THE FALL OF THE ROMAN EMPIRE (1986).

⁶⁴ One of the earliest examples of rules regulating combat comes from the *Torah*. For example, in the book of *Deuteronomy*, the Hebrews were given specific instructions on the protections that were to be afforded to the inhabitants of a city under siege. In all cases, torture was prohibited. Similarly, fruit trees outside of a besieged city were

Sherman never was held accountable for the barbarous outrages that he sponsored.

IV. Conclusion

*Lee is the only man I know whom I would follow
blindfolded.*⁶⁵

—Thomas J. Jackson

The antithesis of Sherman, General Lee not only is remembered as a military genius, but also is praised equally by North and South, for his careful adherence to the laws of war—particularly in the protection of the property and persons of civilians. Lee never subjected the northern civilian population to the terror and horror that was visited upon his own people. On the other hand, to those who have studied the man, Lee knew no other way.

In April 1861, when Lieutenant General Scott received Lee's resignation from the United States Army to offer his services to the southern cause, Scott expressed the greatest regret. A witness, however, noted that General Scott was consoled knowing that he "would have as his opponent a soldier worthy of every man's esteem, and one who would conduct the war upon the strictest rules of civilized warfare. There would be no outrages committed upon the private persons or property which he could prevent."⁶⁶ Clearly, even before they were codified in the Lieber Code, Scott understood—as did Lincoln, Sherman, and Grant—what the customary international rules regarding civilized conduct in war required of them.⁶⁷

On both of his campaigns into the North, Lee conducted his army impeccably, punishing all soldiers convicted for larceny of private property. Fully realizing that Union forces wantonly had razed civilian homes and farms in the neighboring Shenandoah Valley, Lee nevertheless kept close rein on his soldiers. Lee wrote,

protected from destruction. The fruit could be eaten, but it was unlawful to cut down the tree. *Deuteronomy* 20:10-20.

⁶⁵ G. F. R. HENDERSON, STONEWALL JACKSON 307 (1989). Considered to be Lee's finest corps commander, General Jackson was wounded mortally at the battle of Chancellorsville.

⁶⁶ JONES, *supra* note 13, at 128.

⁶⁷ *Id.*

No greater disgrace can befall the army and through it our whole people, than the perpetration of barbarous outrages upon the innocent and defenseless. Such proceedings not only disgrace the perpetrators and all connected with them, but are subversive of the discipline and efficiency of the army, and destructive of the ends of our **movement**.⁶⁸

Although some southerners have criticized Lee for not authorizing lawful **reprisals**⁶⁹ to deter Federal violations in the future, General Lee firmly believed that reprisals were not the answer. Responding to a letter from the Confederate Secretary of War regarding possible Confederate responses to Union atrocities, Lee reiterated his position in the summer of 1864:

As I have said before, if the guilty parties could be taken, either the officer who commands, or the soldier who executes such atrocities, I should not hesitate to advise the infliction of the extreme punishment they deserve, but I cannot think it right or politic, to make the innocent . . . suffer for the **guilty**.⁷⁰

With Americans fighting Americans, Lee knew that the long-term effects of engaging in reprisals would not be profitable for the nation or the South. He was undoubtedly correct; Lee's strict adherence to the rules regulating warfare, coupled with his firm policy prohibiting reprisals, contributed greatly to the healing process after the **War**.⁷¹

One of the driving forces that created the legend of Lee, the ultimate gentleman, was his unmatched sense of **humanity**.⁷² "Lee was the soldier-gentleman of tradition, generous, forgiv-

⁶⁸ EDWARD J. STACKPOLE, *THEY MET AT GETTYSBURG* 31 (1980).

⁶⁹ When one party to the conflict violates an established rule of law, the injured party has the right to respond with a use of force that otherwise would be unlawful. Reprisals are not designed to punish the offending party, but to persuade it to cease and desist the illegal conduct. Under current rules, several criteria—some required by domestic policy—must be met before the United States may resort to reprisals. At the time of the War Between the States, the injured party first would have to provide a warning to the wrongdoing belligerent. If the wrongdoer refused to comply, then the injured belligerent could employ a response proportionate to the initial illegal act. See FM 27-10, para. 497.

⁷⁰ 30 S. Hist. Soc'y Papers 94 (1902).

⁷¹ See WILLIAMS, *supra* note 1, at 301. Just before the surrender at Appomattox, several officers suggested that the Confederate Army should scatter and "take to the hills." Lee would not permit continued resistance by guerrilla methods. He replied that "this kind of warfare would bring only devastation and misery to the people the army had been defending."

⁷² See BURKE DAVIS, *GRAY FOX* (1966).

ing, silent in the face of failure . . . a hero of mythology.”⁷³ No matter how great the temptation for legitimate reprisals, a concept well recognized in international law, R.E. Lee would not stoop to the level of his enemies. This is one of the reasons he has been called the “Christian General,”⁷⁴ as reflected in his address to the troops as they marched into Pennsylvania during the Gettysburg campaign of 1863: “It must be remembered that we make war only on armed men, and that we cannot take vengeance for the wrongs our people have suffered without lowering ourselves in the eyes of . . . Him to whom vengeance belongeth.”⁷⁵ Instructing his officers to arrest and punish all soldiers who committed any offense on the person or private property of civilians, he reminded them that “the duties exacted of us by civilization and Christianity are not less obligatory in the country of the enemy than in our own.”⁷⁶

In contrast, Sherman’s atrocities simply sowed the seeds of hatred for generations of southerners—a hatred that is a common epitaph for those who commit war crimes. His assumption that he could terrorize the South into submission by devastating the farms and towns was totally fallacious. “Although the havoc wreaked by Sherman’s hordes contributed to the Confederate defeat, this contribution was so indirect and ambiguous that it did not justify militarily, much less morally, the human misery that accompanied and followed it.”⁷⁷

Finally, the contention that violations of the law of war are necessary in an “ends justifies the means” analysis is fundamentally inaccurate. Aside from the obvious issue of morality, violations are most often an unwise waste of military resources. As the pragmatic Prussian soldier and author, Karl von Clausewitz, observed, “If we find that civilized nations do not . . . devastate towns and countries, this is because their intelligence exercises greater influence on their mode of carrying on War, and has taught them a more effectual means of applying force.”⁷⁸

⁷³ *Id.* at 1.

⁷⁴ *See, e.g.,* NAGEL, *supra* note 18, at 301. Lee’s view on Christian salvation was devoid of any form of human merit or morality although by the measure of any society, his own moral standards were impeccable. Grace oriented, he wrote, “I can only say that I am a poor sinner, trusting in Christ alone for salvation.” *See* Addicott, *supra* note 23, at 37.

⁷⁵ GRAGG, *supra* note 7.

⁷⁶ *Id.*

⁷⁷ Robertson, *supra* note 27, at 20.

⁷⁸ KARL VON CLAUSEWITZ, *ON WAR* 4 (J. Graham trans. 1918).

One noted historian has described the true legacy of W.T. Sherman as follows:

Sherman must rank as the first of the modern totalitarian generals. He made war universal, waged it on the enemy's people and not only on armed men, and made terror the linchpin of his strategy. To him more than any other man must be attributed the hatred that grew out of the Civil War.⁷⁹

In the context of Operation Desert Storm, General Schwarzkopf clearly took only one quality from Sherman—that is, his reputation for ferocity. General Schwarzkopf related on numerous occasions that he hated war and all that it brought.⁸⁰ He also pointed out, however, that “once committed to war then [one should] be ferocious enough to do whatever is necessary to get it over with as quickly as possible in victory.”⁸¹ The difference, of course, was that Schwarzkopf, in lawful combat, directed his ferocity toward legitimate military targets of the enemy, while Sherman illegally directed his ferocity toward innocent and helpless civilians. Obviously, only in this limited analogy to the concept of “ferocity” did General Schwarzkopf pay any respect to William T. Sherman. From a military, as well as from a legal and moral perspective, General Schwarzkopf was not advocating that the United States military should find anything positive from the atrocities of General Sherman.

Whether judged in the light of tactics or of moral conduct, the actions of the American military in the Gulf War⁸² reflected the impact of Lee—not Sherman. Gauged by these two factors, the Persian Gulf was not a place where lessons were learned, but a place where lessons were validated. With this validation of the magnificent ability and character of the Allied fighting forces in general, and the American military in particular, comes an appropriate tribute to Robert E. Lee.

Great armies are neither created, nor sustained, by accident. To a large degree, great armies are maintained by officers who

⁷⁹ WINTLE, *supra* note 16, at 458.

⁸⁰ See WASH. TIMES, Mar. 1, 1991, at 6.

⁸¹ *Id.*

⁸² See *Investigators Dismiss War-Crime Allegations*, ARMY TIMES, Sept. 23, 1991, at 10. Allegations of American soldiers committing war crimes were minimal and all allegations were investigated promptly. In the Vietnam War, approximately fifty army personnel were tried by military courts for war crimes. See PETER KARSTEN, LAW, SOLDIERS, AND COMBAT 97 (1978).

understand, and then are able to apply, the lessons of military history. In this respect, no officer truly can be called a professional without a firm commitment to the moral and ethical rules regulating combat. Quite naturally, this objective requires constant training, as well as a comprehensive understanding of one's moral "roots."

With the collapse and dismantling of the Soviet Union, many argue that America has become the role model for the world. Certainly, this is only part of the truth. To a substantial degree, the tyranny of communism met its end precisely because America always has been humanity's beacon for all that is worthy about mankind.

Consequently, the military of the United States constantly must reaffirm its commitment to the positive values of military proficiency and ethical integrity. For instruction, inspiration, and inculcation, American officers can find no better role model than General Lee. While some may forget, ignore, or purposefully deny the role that Lee has had in shaping our modern military, to those who are objective, his impact never can be obscured.⁸³ To those who rediscover him through the pages of history, he still has much to impart. May the officer corps of the United States always reflect his military genius and gentle humanity.

Perhaps the most telling tribute to Lee came from his former enemies. When General Lee died in 1870, newspapers throughout the North universally praised his military genius and morality.⁸⁴ The *New York Herald* said, "In him the military genius of America was developed to a greater extent than ever before. In him all that was pure and lofty in mind and purpose found lodgment. He came nearer the ideal of a soldier and Christian general than any man we can think of."⁸⁵

In a speech given in 1874, Senator Benjamin H. Hill of Georgia summed up the true greatness of General Robert Edward Lee as follows:

⁸³ GRAGG, *supra* note 19, at 224. "More than a century after his death, amid the vastly different life-style of modern American society, literate Americans who discovered anew the life of Robert E. Lee would often be affected with the same awe and admiration experienced by Lee's contemporaries."

⁸⁴ Lee died in Lexington, Virginia, where he served as the President of Washington College from 1865 to 1870.

⁸⁵ See JONES, *supra* note 13, at 482. The *Cincinnati Enquirer* said, "He was the great general of the Rebellion. It was his strategy and superior military knowledge which kept the banner of the South afloat for so long" The *Philadelphia Age* called him "a great master of defensive warfare . . . probably not [to be] ranked inferior to any general known in history."

He was a foe without hate, a friend without treachery, a soldier without cruelty, and a victim without murmuring. He was a public officer without vices, a private citizen without wrong, a neighbor without hypocrisy, and a man without guilt. He was Caesar without his ambition, Frederick without his tyranny, Napoleon without his selfishness and Washington without his reward.⁸⁶

⁸⁶ *General Robert E. Lee and His Famous Horse Traveler*, in 13 CONFEDERATE VETERAN 49 (1906).